(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

SECOND APPEAL NO. 107 OF 2003

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. V. P. Thali, advocate for the appellants.

Mr. Sudin Usgaokar, advocate for the respondent nos. 1,2,3,4,5 & 6.

CORAM : B. H. MARLAPALLE, J.

DATE : 9th September, 2004.

P.C.:

Heard Mr. Thali, learned advocate for the appellants/plaintiffs, who had moved Special Civil Suit No.44/75/I before the learned Civil Judge, Senior Division, Margao. The said suit was for the relief of declaration and possession of the suit property which was admittedly purchased jointly by two brothers, i.e. Kashinath and Anant. The defendants were the legal representatives of the third brother i.e. Narayan and they had claimed their right of 1/3rd share in the suit property.

2. In the written statement filed a specific issue was raised regarding non-joinder of necessary parties as defendants. The trial Court noted that the defendant nos.2 to 6 were the sons of Narayan, but their spouses were not brought on record, as well as their sisters. On assessment of the evidence, the trial Court held that the 1/3rd share of Narayan was not separated from the suit property in the year 1934 as claimed by the plaintiffs and the preliminary objection raised by the defendants regarding non-joinder of necessary parties was fatal to the suit. By Judgment and Order dated 25th July, 1979, the suit came to be dismissed. The plaintiffs, therefore, approached the lower Appellate Court in Regular Civil Application No.15/98, by the learned Additional District Judge at Margao. In paragraph 14 of its Judgment, the lower Appellate Court has elaborately dealt with the issue of non-joinder of parties on the

ground that 1/3rd of the suit house was a property vested in the name of the deceased Narayan and though his sons were brought on record as defendant nos. 2 to 4, their spouses were not brought on record. Reliance has been placed on the decision of the Supreme Court in the case of **Kanakarathanammal vs. Loganath Mudaliar & Anr.** (AIR 1965 SC 271), wherein it was held that the suit for declaration and recovery of possession becomes incompetent if some co-owners are not impleaded in it. Unless all the co-owners are impleaded as defendants, the decree, if granted in favour of the plaintiffs, could not be executed.

3. This preliminary issue decided by both the courts below is fatal to the suit filed by the plaintiffs and, therefore, on this ground itself the suit itself was rightly dismissed. There is no other substantial question of law

involved in this Second Appeal and

the same is hereby dismissed in limine.

B. H. MARLAPALLE, J.

mc.